99TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
99-748

KUMARI RAJLAKSHMI BAIS

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AUGUST 5, 1986.—Committed to the Committee of the Whole House and ordered to be printed

Mr. MAZZOLI, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 2652]

The Committe on the Judiciary, to whom was referred the bill (H.R. 2652), for the relief of Kumari Rajlakshmi Bais, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Line 6, delete "his" and insert in lieu thereof "*her*". Line 11, after the word "Act." insert the following:

> *Provided further,* That Doctor and Mrs. Vijay C.S. Bais file a petition within two years after the date of enactment of this Act.

Line 11, after the word "Act." insert the following:

> *Provided further,* That Doctor and Mrs. Vijay C.S. Bais file a petition within two years after the date of enactment of this Act.

PURPOSE OF THE BILL

The purpose of this bill, as amended, is to facilitate the admission into the United States of the adopted child of United States citizens. The bill is amended to provide that relief must be sought within two years of enactment.

STATEMENT OF FACTS

The beneficiary of this bill is a 2 year old native and citizen of India adopted by U.S. citizens May 2, 1986 in India. The adoptive mother is also the aunt of the child. Dr. and Mrs. Bais have been married 13 years and have no children; they have provided finan-

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cial and other support on behalf of the beneficiary averaging $100 per month. Dr. Bais earns $100,000 and Mrs. Bais is employed in his office. A favorable home study has been provided.

The Committee notes that a prior adoption was attempted by the mother in January 1985; however, because of special requirements relating to Hindu adoptions prohibiting the mother to adopt a child, even with the husband's proxy, Dr. and Mrs. Bais were both required to travel to India in 1986 to complete the adoption as required by Hindu law and tradition. Because of the complexities of Indian adoptions, the Committee has incorporated a Library of Congress analysis of the May 2, 1986 adoption which has been determined to be valid.

The pertinent facts in this case are contained in letters dated January 9, 1986 and July 7, 1986 from the Commissioner of the Immigration and Naturalization Service to the Chairman of the Committee on the Judiciary. That letter and accompanying memorandum read as follows:

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILE RE: H.R. 2652

Information concerning this case was obtained from Dr. Vijay C. S. Bais and Mrs. Rajani V. Bais, who are the adoptive parents, natural uncle and aunt, respectively, of the beneficiary, and the interested parties in this case.

The beneficiary, Kumari Rajlakshmi Bais, a native and citizen of India, was born June 1, 1984 in India. She resides with both of her natural parents, Mr. Anup Basu and Mrs. Shobha Basu, in India. Mrs. Basu is the natural sister of Rajani V. Bais, adoptive mother and interested party. On January 23, 1985, the natural parents, in a witnessed declaration, gave their consent to the adoption by the interested parties. On the same date the beneficiary was adopted by the interested parties through a deed of adoption registered with civil authorities at Nagpur, Maharashtra, India.

The interested party, Doctor Vijay C. S. Bais, a native of India and a naturalized citizen of the United States, was born September 19, 1938. He received his medical degree at Mahatma Gandhi Memorial Medical College at Indore, India in 1961. On December 28, 1973, he was admitted to the United States at Blaine, Washington as a nonpreference immigrant. He has practiced Ontolaryngology in Merced, California since 1980.

The interested party, Rajani V. Bais, a native of India and a naturalized citizen of the United States, was born November 30, 1947. She received a Master of Arts degree in Indian History and Archeology at Nagpur University in Nagpur, India. She was also admitted to the United States on December 28, 1973 at Blaine, Washington as a nonpreference immigrant.

Mrs. Bais has been employed as office manager in her husband's medical practice in Merced, California since June 1984. The interested parties were married in 1972 in India. They have a combined income of about $115,000 a year. In September 1985, they purchased their home in Merced, California on which they owe approximately $74,000. They claim no significant assets or debts.

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The interested parties state they have been unable to have children of their own. The beneficiary's natural parents, who already have two older children, could not afford to support a third child and offered the beneficiary for adoption. According to the interested parties a home study has been completed by the California State Social Services Department. No copy of the report is presently available. The interested parties provide support in the amount of $100 a month to the beneficiary in India.

Attached are copies of the consent of adoption and the deed of adoption.

U.S. DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington, DC, July 7, 1986.

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Hon. PETER W. RODINO, JR.,
Chairman, Committee on the Judiciary, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This refers to H.R. 2652 in behalf of Kumari Rajlakshmi Bais.

The interested parties, Dr. and Mrs. Vijay C.S. Bais, have provided a new Deed of Adoption dated May 2, 1986, showing that Dr. Bais legally adopted the beneficiary according to Hindu religious rites and registered the adoption with civil authorities in Nagpur, Maharashtra, India. On the same date the natural parents, in a witnessed declaration, gave their consent of the adoption. The interested parties have advised there are no other material changes in the status of this case.

Sincerely,

FOR THE COMMISSIONER
MARVIN T. ELY
(For Greg Leo, Director,
Congressional and Public
Affairs).

On June 17, 1986 the Department of State submitted a report on this bill which reads as follows:

U.S. DEPARTMENT OF STATE,
Washington, DC, June 17, 1986.

Hon. PETER W. RODINO, JR.,
Chairman, Committee on the Judiciary, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: In reference to your request for a report concerning the case of Kumari Rajlakshmi Bais, beneficiary of H.R. 2652, 99th Congress.

This bill would provide that the beneficiary may be classified as a child within the meaning of section 101(b)(1)(F) upon approval of a petition filed on her behalf by Dr. and Mrs. Vijay C.S. Bais, United States citizens. The bill also provides that the natural parents or brothers or sisters of the beneficiary shall not, by virtue of such relationship, be accorded any right, privilege or status under the Immigration and Nationality Act.

Correspondence between the United States Consulate General at Bombay, India, in whose consular jurisdiction the beneficiary resides, and this Department has provided the following information regarding Kumari Rajlakshmi Bais.

On February 3, 1986, at the request of the Consulate General, the beneficiary and her natural parents appeared at the consular section in connection with Kumari's immigrant visa interview.

In the course of the interview Mr. and Mrs. Basu indicated that because they already have two other children, a boy and a girl, they feel that they cannot afford a third child. The decision to give Kumari in adoption to Doctor and Mrs. Bais was made before the beneficiary was born. Mr. Basu, the natural father, is a junior engineer and is employed by India Telephones (a Government of India undertaking) in Nagpur. He has a yearly income of approximately RS. 24,000. Mrs. Basu is the sister of the beneficiary's adoptive mother.

In January 1985, Mrs. Bais traveled to India to complete the adoption proceedings. The beneficiary was adopted under Hindu adoption laws which permit adoption of children, even if they are not orphaned or abandoned. A deed of adoption, executed by the natural parents and the adoptive parents on January 24, 1985, appeared to have made the adoption legal and complete under Indian laws.

However, upon receipt of documentation submitted by the Consulate General and review of the adoption particulars by the legal advisor, it became apparent that a problem existed regarding the beneficiary's adoption. Under the Hindu Adoption and Maintenance Act of 1956 the right to adopt belongs to a male Hindu or sikh. Section 8 of that Act grants a woman authority to adopt a child under very limited circumstances. Where the husband is a Hindu of sound mind, the wife does not have the capacity to take a child in adoption even with her husband's consent. A violation of this statutory term renders the adoption void.

The BIA (Board of Immigration Appeals) in "Matter of Dhillon" addresses a case with very similar facts as the beneficiary's circumstances. The adoptive mother with the power of attorney of the adoptive father went to India and adopted a child under Hindu law. The power of attorney was registered in Texas granting the wife, adoptive mother, authority to execute the "adoption deed". The BIA obtained an opinion from the Library of Congress which questioned the validity of the adoption in view of the power of attorney. As the record lacked any evidence which convinced the Board that the adoption was indeed valid under these facts, the petition was denied.

In the case of the beneficiary, the adoptive mother, Mrs. Bais, adopted Kumari empowered by a power of attorney granted by her husband, the adoptive father. Since the validity of the adoption appeared to be in question under Hindu adoption laws, the Consulate General was asked to submit a written statement from the appropriate Indian authorities clearly indicating whether the beneficiary's adoption obtained under a power of attorney satisfied the requirements of Indian laws and thus deemed to be valid.

On March 20, 1986, the Consulate General reported that it had consulted the public prosecutor for the Bombay City Civil Court

concerning the validity of the adoption decree for Kumari Rajlakshmi Bais in view of the fact that the adoptive father was not present in India at the time of the adoption but was represented by his wife acting on a power of attorney. The office of the public prosecutor, after legal research on the adoption's validity issue, concluded that the adoption was not valid. The prosecutor stated that the adoptive mother did not meet the criteria to adopt in her own right and that under section 11 of the Hindu Adoptions and Maintenance Act of 1956, the requirement that the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned would preclude the physical delivery of the child to anyone other than the adopting parent, even if the person had a valid power of attorney to act for the adopting parent.

On May 3rd the Department advised the Consulate General that Dr. Vijany C.S. Bais would travel to India to activate adoption processing and provide the Consulate General with new adoption decree.

On May 9th the Consulate General informed the Department that the adoptive parents had submitted a new Deed of Adoption executed on May 2, 1986. The adoption was accomplished by following Hindu ritual and no court or court proceeding was involved other than that the parties involved, the adoptive and natural parents, all had made a statement as to their having performed the ritual. The statement, titled Deed of Adoption, has been duly registered with the court.

The beneficiary was born on June 1, 1984 in Nagpur, Maharashtra, India, and resides at 66 Surandra Nagar, Nagpur, Maharashtra, with her natural parents. Her adoptive father, Dr. Bais, has been providing financial support toward the beneficiary's expenses in the amount of 100 dollars per month.

The beneficiary has been medically examined and the results of the examination have disclosed no diseae or defects. There is no record of an immigrant visa application having been filed on behalf of the beneficiary.

Sincerely,

JAMES W. DYER,
Acting Assistant Secretary
Legislative and Intergovernmental Affairs.

Enclosures.

DEED OF ADOPTION

I, Vijayachandra Singh Bais s/o Dr. Kailash Singh Bais, aged about 46 years, occupation Medical Practitioner, resident of 630 El Portal Drive, Merced, California, U.S.A. do hereby execute this Deed of Adoption on this 30th day of April 86 at Nagpur as under:

Whereas my marriage with my wife Mrs. Rajani was solemnised in the year 1972 and although 14 years elapsed myself and my wife did not have any issue from our marriage; and

Whereas myself & my wife do not now expect to have a child of our own, I have with full consent & knowledge of my wife decided to adopt a child; and

Whereas after giving due thought and consideration to the matter I decided to adopt the second female child of my wife's

sister Mrs. Shobha w/o Anoop Basu presently aged about 22 months who was named as Kumari Rajlakshmi d/o Anoop Basu; and

Whereas my wife expressly consented to my adopting the said Kumari Rajlakshmi d/o Anoop Basu; and

Whereas I am competent under the provisions of the Hindu Adoption and Maintenance Act, 1956 to adopt a female child as I do not have any female issue of my own either natural or adoptive, legitimate or illegitimate as also since Kumari Rajlakshmi, the child which I have adopted is younger to me by about 45 years; and

Whereas the natural parents of said Kumari Rajlakshmi being Shri Anoop s/o Nirodekumar Basu and Mrs. Shobha w/o Anoop Basu were willing to give in adoption the said Kumari Rajlakshmi to me with the express consent of each other; and

Whereas accordingly I took in adoption the said Kumari Rajlakshmi d/o Anoop Basu, aforesaid on 29-4-1986 according to Hindu religious rites at Nagpur during both Shri Anoop s/o Nirodekumar Basu and Mrs. Shobha w/o Anoop Basu, the natural parents of Kumari Rajlakshmi actually gave and I took in adoption the said Kumari Rajlakshmi with an intention to transfer Kumari Rajlakshmi from the family of Shri Anoop s/o Nirodekumar Basu to my family; and

Whereas accordingly, I have now from 29-4-86 onwards become adoptive father of Kumari Rajlakshmi and my wife has become the adoptive mother of Kumari Rajlakshmi.

I execute this Deed of Adoption evidencing the fact of the aforesaid adoption at Nagpur on this 2nd day of May, 1986, for its registration in the office of the Registrar of Documents at Nagpur as under:

1. That I have adopted with the express consent of my wife Mrs. Rajani, Ku. Rajlakshmi d/o Anoop Basu on 29th April, 1986 according to Hindu religious rites during which Shri Anoop s/o Nirodekumar Basu and Mrs. Shobha w/o Anoop Basu actually gave and took in adoption the said Kumari Rajlakshmi with an intention to transfer her from the family of her natural father Shri Anoop Nirodekumar Basu to my family.

2. I have become adoptive father of Kumari Rajlakshmi and my wife has become her adoptive mother from 29th April 1986 onwards after the aforesaid adoption, whereas Ku Rajlakshmi has become our adopted daughter.

3. The giving in adoption by Shri Anoop Nirodekumar Basu of Kumari Rajlakshmi or my taking her in adoption is not hit by any provision of the Hindu Adoption and Maintenance Act, 1956.

4. That my adopted daughter after her adoption by me shall be known as Kumari Rajlakshmi d/o Vijaychandra Singh Bais.

In witness whereof, I have subscribed my signature to this deed at Nagpur on this 23d day of May 1986.

Witnesses:

_____ _____

_____ _____

VIJAYCHANDRA SINGH BAIS.

DECLARATION

We, Anoop s/o Nirodekumar Basu and Mrs. Shobha w/o Anoop Basu do hereby declare as under:

1. That we are the natural parents of Jumari Rajlakshmi who was born to us at Nagpur on 1st June, 1984.

2. That we willingly decided to give in adoption Kumari Rajlaksmi to Shri Vijaychandra Singh s/o Dr. Kailash Singh Bais, who is a near relative, since he does not have an issue from his marriage and since we considered adoption to Kumari Rajlakshmi by him to be in her interest.

3. That we gave our express consent to each other for such adoption and accordingly we have actually given in adoption Kumari Rajlakshmi to Shri Vijaychandra Singh s/o Dr. Kailash Singh Bais and he has taken in adoption Kumari Rajlakshmi on 29-4-86 at Nagpur according to Hindu religious rites with an intention to transfer Kumari Rajlakshmi from our family to the family of Shri Vijaychandra Singh s/o Dr. Kailash Singh Bais.

4. That we being competent to give in adoption Kumari Rajlakshmi and the adoption of Kumari Rajlakshmi not having been hit by any of the provisions of Hindu Adoption and Maintenance Act, 1956, Kumari Rajlakshmi has become adopted daughter of Shri Vijaychandra Singh Bais from 29-4-86.

In witness whereof we have subscribed our signatures on this 2-5-86 at Nagpur.

Witnesses:

_____ _____

_____ _____

ANOOP S/O NIRODEKUMAR BASU.
MRS. SHOBHA W/O ANNOP BASU.

Mr. Coehlo, the author of the bill, provided the following statement in support of this legislation.

STATEMENT OF CONGRESSMAN TONY COELHO

Mr. Chairman, members of the Subcommittee, I appreciate your giving me the opportunity to come before you today to speak in behalf of H.R. 2652, a bill for the relief of Kumari Bais, a two-year old child adopted in India by my constituents, Dr. and Mrs. Vijay Bais of Merced, California.

As an adoptive parent myself, I know the happiness and joy that these very special children can bring to a family, and I urge the subcommittee to recommend approval of this bill today, in the hope that it will be passed by the House and Senate this year, and Kumari can be united with her loving, but anxious parents before too much longer.

This legislation is required because Kumari is not an orphan and, therefore, cannot be classified as a child within the meaning of Section 101(b)(1)(F) of the Immigration and Nationality Act. In point of fact, her biological mother is Mrs. Bais' natural sister, and both biological parents consented to the adoption. Nor is it possible for Dr. Bais to leave his medical practice to reside with the child in India as required under Section 101(b)(1)(E) of the Act.

Dr. and Mrs. Bais were both born in India but are now U.S. citizens. Dr. Bais graduated from medical school in India, and later spent 8 years in postgraduate study in the United States. He returned to India in 1971, and married Mrs. Bais in 1972. They entered the United States in December 1973 as nonpreference immigrants, but I did not meet them until 1980 when they moved to Merced, California where Dr. Bais established his practice in Ontolaryngology. I can assure you that they are hard working and respected members of the community.

Childless after 12 years of marriage, they considered adopting a child from the United States and sought help through the California Department of Social Services in 1974. After learning from friends that they could adopt a child from India, they decided to pursue that course instead. A home study was conducted by the California Department of Social Services and was approved on September 12, 1984. In the interim, Dr. and Mrs. Bais learned that Mrs. Bais' sister and her husband were expecting a third child which they planned to place for adoption because they could not afford another child. Dr. and Mrs. Bais immediately expressed a willingness to adopt their niece.

Kumari Bais was born on June 1, 1984 and in January 1985, upon the advice of legal counsel in India, Mrs. Bais traveled to India with her husband's power of attorney to complete adoption proceedings under Hindu adoption laws. A report issued by the Department of State on March 12, 1986, based upon a memorandum submitted by the American Consulate at Bombay, concluded that the adoption decree issued on January 24, 1985 was legal and complete under Indian laws. However, upon further review of the case, the Consulate concluded that a problem existed with the adoption. As noted in the Department of State's subsequent report of June 17, 1986, it was determined that under the Hindu Adoption law, the right to adopt belongs to a male Hindu or Sikh and that a wife, except in very limited circumstances, does not have the capacity to adopt a child even with her husband's consent.

Despite the insistence of the legal counsel they had retained in India that the adoption was legal under Hindu law, the Bais' elected to resolve all doubts and uncertainties and both traveled to India in May and executed a new Deed of Adoption on May 2, 1986.

Both Dr. Bais and his wife were raised in close, stable families, and have a happy and stable marriage. They can be expected to be loving and devoted parents to their adopted daughter. They are well able to afford the expense of raising and educating a child, as Dr. Bais' annual salary is in excess of $100,000 a year, and their savings and investments are substantial.

Mr. Chairman, it is my understanding that there is ample precedent for approval of legislation granting relief under these circumstances. As recently as the 97th Congress, two private bills granting relief to children given for adoption by both natural parents were approved by this Subcommittee and signed into law by the President. The first, H.R. 1681, waived the two year residency and custody requirement and held that the child, who entered the United States as a visitor and was relinquished by her parents for adoption by an aunt and her husband, met the requirements of Section 101(b)(1)(E). The second, H.R. 2010, held that the child, who

was given by her natural parents for adoption in the United States, again by an aunt and her husband, met the requirements of Section 101(b)(1)(E) of the Act, and could be classified as an "orphan" for immigration as an immediate relative.

With these precedents in mind, I would again urge the Subcommittee's favorable consideration of this bill.

The Committee on the Judiciary provides the following report on the legality of the Indian adoption prepared by the Library of Congress dated July 31, 1986:

THE LIBRARY OF CONGRESS,
Washington, DC, July 31, 1986.

Hon. ROMANO L. MAZZOLI,
Chairman, Subcommittee on Immigration, Refugees, and International Law, Committee on the Judiciary, House of Representatives, Rayburn House Office Building, Washington, DC.

DEAR MR. MAZZOLI: This is in response to your request for a determination of an adoption of Kumari Rajlaksmi by Vijayachandra Singh Bais and his wife Rajani. We have prepared the enclosed opinion in this matter.

Pleast let us know if we can be of further assistance.

Sincerely,

KRISHAN S. NEHRA,
Senior Legal Specialist.

Enclosure.

HINDU ADOPTION

The matter herein involves the determination of the validity of a Hindu adoption in India. The facts show that Vijayachandra Singh Bais, forty-six years of age, and his wife Rajani, who are Hindus from India, live n California. They have been married for fourteen years but they have no living child of their own, natural or adopted. In 1986, in order to adopt a daughter, they went to India and, on April 29, 1986, they adopted two-year old Kumari Rajlakshmi, the natural born daughter of Rajani's sister, Shobha and her husband Anoop Basu, also Hindus, in Nagpur, India in accordance with the customary Hindu rites. They also completed the usual ceremony of giving and taking the child, with an intent to transfer her from the natural family to the adoptive family. A deed of adoption was executed between the two families on May 2, 1986, and registered in Nagpur on May 9, 1986.

Since all the parties are Hindus, a valid adoption must be made in compliance with the provisions of the 1956 Act.[1] The Act prescribes the following conditions—

1. The adopter must have the right and be lawfully capable of taking a daughter in adoption.
2. The person giving in adoption must be lawfully capable of doing so.
3. The person to be adopted must be lawfully capable of being taken in adoption.

[1] The Hindu Adoptions and Maintenance Act, 1956, No. 78, § 5.

4. The essential ceremony of giving and taking in adoption must be completed.[2]

Any male Hindu who is of the age of majority and of sound mind has the capacity to take a daughter in adoption provided he has no daughter, natural or adopted, living at the time of adoption. If he has a wife living, he may adopt only with the consent of his wife.[3] No person except the father has the capacity to give his daughter in adoption. However, he must exercise the right to give in adoption with his wife's consent.[4] The Hindu child to be adopted must not have completed the age of fifteen years and she must, at lease, be twenty-one years younger than the adoptive father. A child previously adopted cannot be again given in adoption.[5] Performance of a religious ceremony is not essential but a formal giving and taking in adoption, showing an intention to transfer the child from the natural family to the new family of adoption must be performed.[6] It is the physical act of transfer that completes the fact of adoption.

In this matter, it seems that the adoptive parents have met with all the required conditions for a valid adoption of Rajlakshmi. Therefore, it is apparent that the adoption here is valid.

An adoption, in compliance with the prescribed conditions, is considered valid. A valid adoption is irrevocable and from that day the adopted child loses all rights and connections with the natural family of birth and gains correspondingly all rights in the new family of adoption.[7] She becomes the daughter of the adoptive parents in the same manner as if she was naturally born in that family.

BUDGETARY INFORMATION

This legislation does not provide new budget authority and no estimate or comparison has been received from the Director of the Congressional Budget Office.

OVERSIGHT STATEMENT

The Committee exercises general oversight jurisdiction with respect to all immigration and nationality matters but no specific oversight is contemplated in this instance.

COMMITTEE RECOMMENDATION

Upon consideration of all the facts in this case, the Committee is of the opinion that HR 2652, as amended, should be enacted and accordingly recommends that the bill do pass.

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[2] *Id.* § 6.
[3] *Id.* § 7.
[4] *Id.* § 9.
[5] *Id.* § 10.
[6] *Id.* §11.
[7] *Id.* § 12.